

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: August 9, 2011

From: Randy Ferris, Acting Chief Counsel

David Gau, Deputy Director
Property and Special Taxes Department

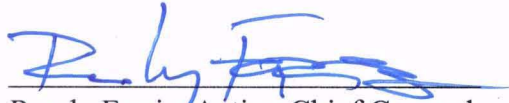
Subject: Board Meeting, August 23-24, 2011
Chief Counsel Matters - Item J - Rulemaking
Proposed Rule 100 Changes to Specified Special Tax and Fee Regulations

We request your approval to place proposed Rule 100 changes to ten Special Tax and Fee regulations on the Chief Counsel's Rulemaking Calendar for the August 23-24, 2011, Board meeting in order to request the Board's authorization to complete the changes. These changes are proposed to be made to regulations pertaining to: the Cigarette and Tobacco Products Licensing Act of 2003; the Hazardous Substances Tax Law; and the Integrated Waste Management Fee Law.

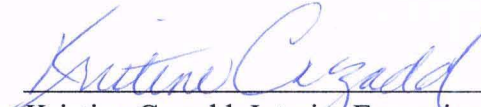
Each of the attached Statements of Explanation includes a detailed description of the proposed changes to each regulation and strikeout and underlined versions of each regulation illustrating the proposed changes. The changes correct a reference to a statute, update the name of the Board division responsible for administering these programs, and update the names of two agencies whose names have changed. The changes are appropriate for processing under Rule 100 without the normal notice and public hearing process because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

If you have any questions regarding this request, please let me know or contact Ms. Carolee Johnstone, at (916) 323-3142.

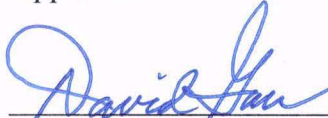
Recommendation by:


Randy Ferris, Acting Chief Counsel

Approved:


Kristine Cazadd, Interim Executive Director

Approved:


David Gau, Deputy Director
Property and Special Taxes Department

BOARD APPROVED

At the _____ Board Meeting

Diane Olson, Chief
Board Proceedings Division

Attachments

Statements of Explanation for Changes to Cigarette and Tobacco Products Licensing Act Regulations 4500, *Definitions*, 4504, *Determination of Arm's Length Transaction*, 4507, *Request for Information and Records*, 4508, *Appeal - Denial of License*, 4509, *Non-Arm's Length Transfer - Sales*, 4600, *Issuance and Contents of a Notice of Violation or Warning Notice*, 4609, *Right to Appeal*, 4700, *Appeal - Excise Taxes Division*.

Statement of Explanation for Changes to Hazardous Substances Tax Regulation 3020, *Records*.

Statement of Explanation for Changes to Integrated Waste Management Fee Regulation 3301, *Records*.

cc: (with attachments):

Ms. Diane Olson	MIC:80
Ms. Christine Bisauta	MIC:82
Mr. Steve Smith	MIC:82
Mr. Bradley Heller	MIC:82
Ms. Carolee Johnstone	MIC:82
Ms. Lynn Bartolo	MIC:57
Mr. Lou Feletto	MIC:31
Mr. Robert Zivkovich	MIC:57

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue

Regulation 4500, *Definitions*

Regulation 4504, *Determination of Arm's Length Transaction*

Regulation 4507, *Request for Information and Records*

Regulation 4508, *Appeal—Denial of License*

Regulation 4509, *Non-Arm's Length Transfer—Sales*

Regulation 4600, *Issuance and Contents of a Notice of Violation or Warning Notice*

Regulation 4609, *Right to Appeal*

Regulation 4700, *Appeal—Excise Taxes Division*

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 4500, *Definitions*, generally provides the definitions that apply to chapter 9.5 (commencing with Regulation 4500) of division 2 of title 18 of the California Code of Regulations, which prescribes the application of the Cigarette and Tobacco Products Licensing Act of 2003 (division 8.6 (commencing with section 22970) of the Business and Professions Code) (Licensing Act). The State Board of Equalization (Board) hereby proposes to update a statutory reference in Regulation 4500, subdivision (i), delete Regulation 4500, subdivision (k), add new subdivision (t), and make other conforming changes to Regulation 4500 and chapter 9.5, under California Code of Regulations, title 1, section (Rule) 100.

Regulation 4500, subdivision (i), defines the term “control” or “controlling” by reference to Business and Professions Code (BPC) section 22971’s definition for the same term. However, BPC section 22971, subdivision (p), defining for the term “control” or “controlling,” was recently renumbered as BPC section 22971, subdivision (d), by Statutes 2010, chapter 607 (Assem. Bill No. 2733), section 1). Accordingly, the Board proposes to amend the definition for the term control in Regulation 4500, subdivision (i), so that it now correctly provides that “‘Control’ or ‘controlling’ means control or controlling as defined in Business and Professions Code section 22971, subdivision (d),” instead of as defined in BPC section 22971, subdivision (p).

As a result of a department-wide reorganization of the Board’s Property and Special Taxes Department on July 1, 2010, administration of the Licensing Act was assigned to a newly established Special Taxes and Fees Division, in place of the department’s Excise Taxes Division. Therefore, the definition of “Excise Taxes Division staff” in Regulation 4500, subdivision (k), is no longer applicable to chapter 9.5. Furthermore, the Board determined that the term “Excise Taxes Division” is currently used throughout chapter 9.5, but the term “Excise Taxes Division staff” is not used in chapter 9.5. Accordingly, the Board proposes to delete subdivision (k) of Regulation 4500 defining “Excise Taxes Division staff,” and add a new subdivision (t) to Regulation 4500 defining “Special Taxes and Fees Division.” The Board proposes to renumber

subdivisions (l) through (t) of Regulation 4500 as subdivisions (k) through (s), respectively. The Board also proposes to replace the term “Excise Taxes Division” with the term “Special Taxes and Fees Division” everywhere the term appears in chapter 9.5 (Regulations 4504, 4507, 4508, 4509, 4600, 4609, 4700).

B. Proposed Amendments

1. Rule 100 Changes to Regulation 4500, *Definitions*

A Rule 100 change is proposed to replace the reference to BPC section 22971, subdivision (p), in Regulation 4500, subdivision (i), with a reference to BPC section 22971, subdivision (d), because BPC section 22971, subdivision (p), was recently renumbered as subdivision (d).

Rule 100 changes are also proposed to: (1) delete subdivision (k) of Regulation 4500 defining “Excise Taxes Division staff”; (2) renumber subdivisions (l) through (t) of Regulation 4500, as subdivisions (k) through (s), respectively, and (3) add new subdivision (t) to Regulation 4500 defining “Special Taxes and Fees Division.”

2. Rule 100 Change to Regulation 4504, *Determination of Arm’s Length Transaction*

A Rule 100 change is proposed to replace the term “Excise Taxes Division” with the term “Special Taxes and Fees Division” in Regulation 4504 to update the name of the Board division responsible for administering the Licensing Act.

3. Rule 100 Change to Regulation 4507, *Request for Information and Records*

A Rule 100 change is proposed to replace the term “Excise Taxes Division” with the term “Special Taxes and Fees Division” in regulation 4507 to update the name of the Board division responsible for administering the Licensing Act.

4. Rule 100 Changes to Regulation 4508, *Appeal—Denial of License*

Rule 100 changes are proposed to replace the term “Excise Taxes Division” with the term “Special Taxes and Fees Division” in subdivisions (a) and (c) of Regulation 4508 to update the name of the Board division responsible for administering the Licensing Act.

5. Rule 100 Change to Regulation 4509, *Non-Arm’s Length Transfer—Sales*

A Rule 100 change is proposed to replace the term “Excise Taxes Division’s” with the term “Special Taxes and Fees Division’s” in Regulation 4509 to update the name of the Board division responsible for administering the Licensing Act.

6. Rule 100 Change to Regulation 4600, *Issuance and Contents of a Notice of Violation or Warning Notice*

A Rule 100 change is proposed to replace the term “Excise Taxes Division” with the term “Special Taxes and Fees Division” in regulation 4600 to update the name of the division responsible for administering the Licensing Act.

7. Rule 100 Changes to Regulation 4609, *Right to Appeal*

Rule 100 changes are proposed to replace the term “Excise Taxes Division” with the term “Special Taxes and Fees Division” in the five places where the term “Excise Tax Division” currently appears in Regulation 4609, subdivision (a), to update the name of the Board division responsible for administering the Licensing Act.

8. Rule 100 Changes to Regulation 4700, *Appeal—Excise Taxes Division*

Rule 100 changes are proposed to replace the term “Excise Taxes Division” with the term “Special Taxes and Fees Division” in the title of Regulation 4700, in the heading of Regulation 4700, subdivision (c), and in Regulation 4700, subdivisions (d), (e), (f), (g), and (h), and to replace the term “Excise Taxes Division’s” with the term “Special Taxes and Fees Division’s” in Regulation 4700, subdivision (h), to update the name of the Board division responsible for administering the Licensing Act.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to provide a correct statutory reference and to reflect the July 1, 2010, reorganization of the Property and Special Taxes Department.

PROPOSED AMENDMENTS

1. Amend Regulation 4500 (Definitions) to read as follows:

Regulation 4500. Definitions.

In addition to the definitions in Business and Professions Code section 22971, the following definitions shall apply to this chapter:

- (a) "Act" means the Cigarette and Tobacco Products Licensing Act of 2003, set forth in division 8.6 of the Business and Professions Code.
- (b) "Appeals Division staff" means an employee or employees of the State Board of Equalization assigned to the Appeals Division of the Legal Department.
- (c) "Applicant" means a retailer, wholesaler, distributor, importer or manufacturer who has applied for a license pursuant to the Act, and, if the retailer, wholesaler, distributor, importer or manufacturer is not an individual, the term includes any person controlling such entity.
- (d) "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction.
- (e) "Board" means the Board Members of the State Board of Equalization meeting as a body or the agency created by article XIII, section 17, of the California Constitution, as the context indicates.
- (f) "Board Proceedings Division staff" means an employee or employees of the State Board of Equalization assigned to the Board Proceedings Division of the Legal Department.
- (g) "Business" means a business operated by a licensee and/or the property upon which or location at which such licensed business is operated.
- (h) "Citation" means a civil notice of violation(s) or a criminal misdemeanor notice to appear.
- (i) "Control" or "controlling" means control or controlling as defined in Business and Professions Code section 22971, subdivision (pd).
- (j) "Conviction" means a judgment of guilt of a criminal offense.
- ~~(k) "Excise Taxes Division staff" means an employee or employees of the State Board of Equalization assigned to the Excise Taxes Division of the Property and Special Taxes Department.~~
- ~~(k)~~ "Finding" or "Findings" means a determination that a violation of the Act has occurred. This can occur by default if no appeal is made from a Notice of Violation or Warning Notice, or by a final decision made pursuant to Regulations 4700, 4701, or 4702.
- ~~(m)~~ "Fine" means any fine imposed by the Board pursuant to the Act.

(am) "Investigations Division staff" means an employee or employees of the State Board of Equalization assigned to the Investigations Division of the Legal Department.

(en) "Licensee" means a licensee as defined in Business and Professions Code section 22971, subdivision (j).

(po) "License subject to a civil or criminal citation" means a license as to which a citation has been issued but no final determination of violation has yet been entered into the licensee's or unlicensed person's permanent record.

(ep) "Notice of Violation" means the document sent to a licensee or unlicensed person referring to the citation issued, the charged violation(s), the penalty or penalties to be imposed, and the licensee's or unlicensed person's appeal rights.

(fg) "Offense" means a criminal conviction of violations of the Act and/or civil findings of violations of the Act.

(sr) "Person" means a person as defined in Revenue and Taxation Code section 30010.

(ts) "Regulation" means a section of title 18 of the California Code of Regulations.

(t) "Special Taxes and Fees Division" means the Special Taxes and Fees Division of the State Board of Equalization's Property and Special Taxes Department.

(u) "Unlicensed Person" means any person not holding a valid license issued by the Board pursuant to the Act.

(v) "Warning Notice" means the document advising a licensee or unlicensed person that the stated violation(s) of the Act will be entered into the licensee's or unlicensed person's permanent record as a first offense and that future violations will result in civil penalties.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22970, 22971, 22974.5, 22978.7 and 22979.7, Business and Professions Code; and Section 30010, Revenue and Taxation Code.

2. Amend Regulation 4504 (Determination of Arm's Length Transaction) to read as follows:

Regulation 4504. Determination of Arm's Length Transaction.

The ~~Excise Taxes Division~~Special Taxes and Fees Division shall determine whether the transfer of a business was pursuant to an arm's length transaction, utilizing the criteria set forth in Regulations 4505 and 4506.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.

3. Amend Regulation 4507 (Request for Information and Records) as follows:

Regulation 4507. Request for Information and Records.

When a business's license is suspended, revoked, or is subject to civil or criminal citation, then the parties to a proposed or completed transfer or sale of the business must, at the Board's request, provide all relevant information on the transfer or sale to the ~~Excise Taxes Division~~ Special Taxes and Fees Division, including, but not limited to, the purchase agreement, all escrow documents and proof of payment or tender of the purchase consideration.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.

4. Amend Regulation 4508 (Appeal—Denial of License) to read as follows:

Regulation 4508. Appeal—Denial of License.

(a) If the ~~Excise Taxes Division~~ Special Taxes and Fees Division determines that a new license should not be issued pursuant to Regulation 4503, then it shall notify the applicant of such determination and deny the application for issuance of a new license for the applicant's business. The applicant may petition for a redetermination within 30 days from the date notice of the denial is mailed or personally delivered to the applicant. The denial of the application shall become final if a petition for redetermination is not filed before the expiration of the 30-day period.

(b) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded.

(c) The Board shall reconsider the determination of the ~~Excise Taxes Division~~ Special Taxes and Fees Division pursuant to its administrative appeals process set forth in article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations and shall grant the applicant an oral hearing if timely requested within 30 days of the date the Decision and Recommendation issued by the Appeals Division is mailed to the applicant. Any Board hearing will be governed by the rules set forth in Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576.

(d) The order or decision of the Board upon a petition for redetermination becomes final 30 days after the date notice thereof is mailed to the applicant, except as provided in Regulation 5560, subdivision (b).

(e) Any notice required by this section shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the applicant's last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, mailbox, sub-post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, notice may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a

corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.

5. Amend Regulation 4509 (Non-Arm's Length Transfer—Sales) to read as follows:

Regulation 4509. Non-Arm's Length Transfer--Sales.

The ~~Excise Taxes Division's~~ Special Taxes and Fees Division's determination that a licensee's transfer of a business with a suspended or revoked license was not at arm's length may establish grounds for an additional violation of the Act. The Investigations Division may issue a citation for a violation of Business and Professions Code section 22980.2, subdivision (c), if the business is found selling cigarettes or tobacco products without a license or after a notification of suspension or revocation of a license.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2, 22979 and 22980.2, Business and Professions Code.

6. Amend Regulation 4600 (Issuance and Contents of a Notice of Violation or Warning Notice) to read as follows:

Regulation 4600. Issuance and Contents of a Notice of Violation or Warning Notice.

The Investigations Division shall forward a copy of a citation issued to a licensee or unlicensed person to the ~~Excise Taxes Division~~ Special Taxes and Fees Division, which shall prepare and mail a Notice of Violation or Warning Notice to the cited licensee or unlicensed person.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

7. Amend Regulation 4609 (Right to Appeal) to read as follows:

Regulation 4609. Right to Appeal.

(a) Every licensee or unlicensed person has the right to appeal any alleged violation of the Act, and may appeal a Warning Notice or Notice of Violation issued by the ~~Excise Taxes Division~~ Special Taxes and Fees Division, as specified below:

(1) If the Notice of Violation contains a penalty of revocation and/or a fine of more than \$2,500, the Notice of Violation may be appealed as follows:

(A) The first appeal shall be to the ~~Excise Taxes Division~~ Special Taxes and Fees Division;

(B) If the licensee or unlicensed person disagrees with the Notice of First Decision, as specified in Regulation 4700, subdivision (h), issued by the ~~Excise Taxes Division~~Special Taxes and Fees Division, the licensee or unlicensed person may make a second appeal to the Appeals Division; and

(C) If the licensee or unlicensed person disagrees with the Notice of Second Decision, as specified in Regulation 4701, subdivision (c), issued by the Appeals Division, the licensee or unlicensed person may make a third appeal to the Board for a final decision.

(2) If the Notice of Violation or Warning Notice does not contain a penalty of revocation or a fine of more than \$2,500, the Notice of Violation or Warning Notice may be appealed as follows:

(A) The first appeal shall be to the ~~Excise Taxes Division~~Special Taxes and Fees Division; and

(B) If the licensee or unlicensed person disagrees with the Notice of First Decision issued by the ~~Excise Taxes Division~~Special Taxes and Fees Division, the licensee or unlicensed person may make a second appeal to the Appeals Division for a final decision.

(b) If a timely appeal is made, a conference and/or hearing will be scheduled to allow the licensee or unlicensed person requesting an appeal an opportunity to contest the violation(s) and show cause why the penalties should not apply or should be reduced.

(c) Burden of Proof. The licensee or unlicensed person shall have the burden of proof as to the grounds for dismissal of any violations or for the reduction of penalties.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

8. Amend Regulation 4700 (Appeal—Excise Taxes Division) to read as follows:

Regulation 4700. Appeal—~~Excise Taxes Division~~Special Taxes and Fees Division.

(a) Time for Filing. A written Request for Appeal, as defined in subdivision (c), below, must be filed within 10 days of the date the Warning Notice or Notice of Violation was mailed to or personally delivered to the licensee or unlicensed person.

(b) Failure to File a Timely Appeal. If a written Request for Appeal is not filed within the 10-day period, the licensee or unlicensed person shall be deemed to have waived his or her right to an appeal and the Warning Notice or Notice of Violation, and the penalty or penalties stated therein, shall become final.

(c) Request for an ~~Excise Taxes Division~~Special Taxes and Fees Division Appeal. The Request for Appeal shall state the specific grounds upon which the licensee or unlicensed person is contesting the Warning Notice or Notice of Violation and shall be accompanied by any and all documentation and written argument to be considered in support of the appeal. The Request for Appeal shall be signed by the licensee or unlicensed person or by an authorized representative.

(d) Notice of Conference. After receiving a timely Request for Appeal the ~~Exeise Taxes Division~~Special Taxes and Fees Division will schedule a conference and send a Notice of Conference stating the date and time of the scheduled conference to the licensee or unlicensed person. The Notice of Conference shall be sent to the licensee or unlicensed person at least 15 days prior to the date of the scheduled conference.

(e) Conference. The conference is intended to be an informal, non-adversarial proceeding with a discussion of the relevant facts and applicable laws and regulations. Written statements made under penalty of perjury may be submitted, but subpoenas are not issued for conferences, nor is sworn testimony required. The conference will be conducted by telephone and shall not be recorded and/or transcribed by the ~~Exeise Taxes Division~~Special Taxes and Fees Division. The conference may be recorded and/or transcribed by the licensee or unlicensed person, but only if the licensee or unlicensed person agrees to provide a copy of the recording or transcript to the ~~Exeise Taxes Division~~Special Taxes and Fees Division.

(f) The ~~Exeise Taxes Division~~Special Taxes and Fees Division may grant one request to reschedule or postpone a conference. If a request is granted, the conference shall be rescheduled or postponed so that it can be held within 15 days of the date the conference was scheduled to be held prior to the granting of the request, unless the Chief of the ~~Exeise Taxes Division~~Special Taxes and Fees Division or his or her designee approves of a later date.

(g) During a conference, the ~~Exeise Taxes Division~~Special Taxes and Fees Division may grant a request for additional time to submit additional evidence. If additional time is granted, the evidence shall be submitted to the ~~Exeise Taxes Division~~Special Taxes and Fees Division no later than 7 days after the conference date.

(h) Decision. Following the conference, the ~~Exeise Taxes Division~~Special Taxes and Fees Division shall issue a Notice of First Decision. The Notice of First Decision will set forth the ~~Exeise Taxes Division's~~Special Taxes and Fees Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights.

(i) A licensee or unlicensed person who receives a Notice of First Decision may appeal the decision within 10 days of the date the Notice of First Decision was mailed or personally delivered to the licensee or unlicensed person by timely filing a Request for Appeals Conference, as specified in Regulation 4701, subdivision (a), with the Board Proceedings Division.

(j) Failure to File a Timely Appeal. If a Request for Appeals Conference is not filed within the 10-day period provided in subdivision (i), then the licensee or unlicensed person shall be deemed to have waived his or her right to an appeal and the Notice of First Decision, and the penalty or penalties stated therein shall become final.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

CHANGE WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue
Regulation 3020, *Records*

A. Factual Basis

Chapter 8 of division 2 of title 18 of the California Code of Regulations (chapter 8) contains regulations that implement, interpret, or make specific provisions of the Hazardous Substances Tax Law (part 22 (commencing with section 43001) of division 2 of the Revenue and Taxation Code). California Code of Regulations, title 18, section (Regulation) 3020, *Records*, is contained in chapter 8 and generally specifies the types of records a taxpayer must maintain under the Hazardous Substances Tax Law.

Pursuant to Health and Safety Code section 105190, the State Board of Equalization (Board) administers a fee under the Hazardous Substances Tax Law that supports the occupational lead poisoning prevention program (Health and Safety Code section 105185 et seq.), and Regulation 3020, subdivision (b)(3)(A), requires taxpayers to maintain records of their correspondence with the agency responsible for managing the occupational lead poisoning prevention program. However, on July 1, 2007, the name of the agency responsible for managing the occupational lead poisoning prevention program was changed from the Department of Health Services to the California Department of Public Health. (See Health & Saf. Code, §§ 20 and 131051, subd. (a)(6)(S).) Accordingly, the Board hereby proposes to replace the term “Department of Health Services” with the term “California Department of Public Health” in Regulation 3020, subdivision (b)(3)(A), under California Code of Regulations, title 1, section (Rule) 100.

B. Proposed Amendment

Rule 100 Change to Regulation 3020, *Records*

A Rule 100 change is proposed to replace the term “Department of Health Services” in Regulation 3020, subdivision (b)(3)(A) with the term “California Department of Public Health” to update the name of the agency responsible for managing the occupational lead poisoning prevention program.

The foregoing change is appropriate for processing under Rule 100 because it is a change without regulatory effect and does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, this change is necessary to reflect the 2007 renaming of the agency responsible for managing the occupational lead poisoning prevention program.

PROPOSED AMENDMENT

Amend Regulation 3020 (Records) to read as follows:

Regulation 3020. Records.

(a) General. A taxpayer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

(b) Specific Applications. In addition to the record keeping requirements set forth in subdivision (a), taxpayers shall comply with the following requirements.

(1) Hazardous Substance Tax. A taxpayer shall keep complete records, including but not limited to:

(A) Uniform Hazardous Waste Manifests.

(B) Transporter billings or invoices.

(C) Weight tickets.

(D) Waste profile analysis reports.

(2) Environmental Fee. A taxpayer shall keep complete records, including but not limited to:

(A) Payroll reports and all other documents listing employees, wages, and hours worked.

(B) Employment agreements or contracts.

(3) Occupational Lead Poisoning Prevention Fee. A taxpayer shall keep complete records, including but not limited to:

(A) Fee waiver requests and ~~Department of Health Services~~ California Department of Public Health responses.

(B) Payroll reports and all other documents listing employee names, wages paid, and hours worked.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Section 43502, Revenue and Taxation Code.

CHANGE WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue
Regulation 3301, *Records*

A. Factual Basis

Chapter 8.3 of division 2 of title 18 of the California Code of Regulations (chapter 8.3) contains regulations that implement, interpret, or make specific the Integrated Waste Management Fee Law (part 23 (commencing with section 45001) of division 2 of the Revenue and Taxation Code). California Code of Regulations, title 18, section (Regulation) 3301, *Records*, is contained in chapter 8.3 and generally specifies the records that the State Board of Equalization (Board) requires that a feepayer maintain with respect to the integrated waste management fee.

The Board deposits specified fees collected under the Integrated Waste Management Fee Law into the Integrated Waste Management Account and, after appropriation by the Legislature, the fees may be used to fund the integrated waste management program provided for in division 30 of the Public Resources Code. (Pub. Resources Code, §§ 48001 and 48004.) In 2009, the agency responsible for managing the integrated waste management program was reorganized and renamed. Its name was changed from the California Integrated Waste Management Board to the Department of Resources Recycling and Recovery. (See Pub. Resources Code, § 40400, added by Stats. 2009, ch. 21 (Sen. Bill No. 63), effective January 1, 2010.) Accordingly, the Board proposes to replace the term “Integrated Waste Management Board” with the term “Department of Resources Recycling and Recovery” in Regulation 3301, subdivision (a), under California Code of Regulations, title 1, section (Rule) 100.

B. Proposed Amendment

Rule 100 Change to Regulation 33040, *Exemption from Fees*

A Rule 100 change is proposed to replace the term “Integrated Waste Management Board” with the term “Department of Resources Recycling and Recovery” in Regulation 3301, subdivision (a), to update the name of the agency responsible for managing the integrated waste management program.

The foregoing change is appropriate for processing under Rule 100 because it is a change without regulatory effect and does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, this change is necessary to update the name of the agency responsible for managing the integrated waste management program.

PROPOSED AMENDMENT

Amend Regulation 3301 (Records) to read as follows:

Regulation 3301. Records.

(a) General. A fee payer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901. Notwithstanding the record keeping requirements of the ~~Integrated Waste Management Board~~ Department of Resources Recycling and Recovery set forth at California Code of Regulations, Title 14, Section 17414, for fee collection purpose the fee payer shall retain and preserve records for a period of not less than four years except as provided in Section 4901.

(b) Specific Applications. In addition to the record keeping requirements set forth in subdivision (a), fee payers shall comply with the following requirements. A fee payer shall keep complete records, including but not limited to:

- (1) Weight tickets or other source documents recording amounts of waste entering the landfill.
- (2) Documentation supporting the validity of volumetric conversion factors used as an alternative to actual weight to report waste tonnage.
- (3) Reports to other local and state agencies of waste tonnage disposed.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Section 45852, Revenue and Taxation Code.